IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 19/2006

1. Falcon Retreat Pvt. Ltd.,
   Company incorporated under the
   Companies Act, 1956, with its
   registered Office at Falcon Resorts
   Calangute, Goa represented by its
   Managing Director, Shri Anthony
   Rosario Fernandes,
   Resident of Candolim, Goa

2. Shri Anthony Rosario Fernandes,
   Director and Shareholder of the
   Respondent No.1 resident of H.No.
   323/5-C, Falcon House,
   Muddo, Candolim, Goa. ..... Petitioners.

V/s.

1. EDC Ltd.,
   A company registered under the
   Indian Companies Act, 1956
   with registered Office at :
   EDC House, 1st Floor,
   Atmaram Borkar Road,
   Panaji, Goa.

2. State Bank of India,
   Corporation constituted under the
   State Bank of India Act, 1955 with
   its local Head Office at Mumbai
   and Bench Office at LIC Building
   Patto Plaza, Panaji, Goa.

3. M/s L.K. Trust,
   a Trust incorporated under the
   Indian Trust Act, 1882 having
   registered Office at Brewery House,
   7th Mile, Kanakpura Road,
   Bangalore 560 062. ..... Respondents.

Shri Sudesh M. Usgaonkar, Advocate for the petitioners.

Shri M. S. Sonak, Advocate for the respondents No.1 and 2.

Shri S. G. Dessai, Senior Advocate with Shri Shivan Dessai, Advocate for respondent No.3.

CORAM : R.M.S. KHANDEPARKAR &
N.A. BRITTO, JJ.

DATE : 22ND FEBRUARY, 2006.

J U D G M E N T : (R.M.S. KHANDEPARKAR, J.)

Rule. By consent, the rule is made returnable forthwith.

2. The petitioners seek a writ of mandamus in the nature of direction to the respondent No.1 to consider and accept the proposal of the petitioners communicated to the respondent No.1 vide letter dated 18.1.2006 and further to restrain the respondent No.1 from proceeding to sell the property in question to the respondent No.3 and, in the alternative, in case of completion of sale, to quash and set aside the same.

3. The petitioners being chronic defaulters in the matter of repayment of the loan to the respondents No.1 and 2 and besides having failed to keep their assurances and representations in the matter of clearance of dues and/or for arranging a purchaser for the attached properties, the respondent No.1 proceeded to take action in terms of Section 29 of the State Financial Corporation Act and consequently, attached the properties of the petitioners and also took

possession thereof in September/October, 2004. The hotel property was put to auction as many as seven times but was postponed either because of non-availability of the purchaser or consequent to the indulgence shown to the petitioners on account of representations made by the petitioners. However, nothing concrete was done and absolutely no efforts were made by the petitioners to regularise the loan accounts or reduce the liability. Ultimately, the respondent No.1, by letter dated 5.12.2005, notified the petitioners that they have received a private offer of Rs.12.99 crores which is much higher than the offer received in the auction of the hotel property and if the petitioners were interested, they should get a better offer within 3 days from the date of the letter, failing which the respondent would proceed with the sale of the hotel property to the firm from whom the offer of Rs.12.99 crores had been received. On 15.12.2005, the petitioners expressed their inability to secure a better offer within three days as they had received the letter only on 13.12.2005 i.e. after expiry of period of three days from the date of issuance of the letter dated 5.12.05. The petitioners sought time of 12 months to arrange buyer to settle the entire liability of the respondent No.1. By letter dated 29.12.05, the respondent No.1 informed the petitioners that it was constrained to accept the private offer of Rs.12.99 crores. By letter dated 5.1.06, the petitioners called upon the respondent No.1 not to proceed with the sale of the property to the proposed buyer on the ground that the price offered was ridiculous. On 17.1.06, the

respondent No.1 issued a public notice stating that it was in possession of the hotel property attached by it on account of the default in payment committed by the petitioners and it was deemed owner in possession of the hotel property and entitled to sell the same. On 22.1.06, website of the respondent No.1 disclosed that the property attached by respondent No.1 was still available for sale. The present petition was filed on 23.1.06 with the prayers as stated above. The respondents have contested the claim of the petitioners stating that in terms of resolution dated 5.12.05 by the Board of respondent No.1, in its 288th meeting, it was decided to accept the offer of the respondent No.3 in the amount of Rs.12.99 crores. However, as a measure of fairness, the respondent No.1 vide communication dated 5.12.05 informed the petitioners about the proposal that was being accepted to the tune of Rs.12.99 crores unless the petitioners could submit a better offer. However, there was no favourable response from the petitioners. The respondent No.3 on its part has stated that respondent No. 1 accepted the offer made by the respondent No. 3 and accordingly communicated the same to the respondent No.3 under letter dated 12.12.05 and consequently, there is a concluded contract between the respondent No.1 and the respondent No.3 in relation to the hotel premises. Therefore, the question of issuance of directions in terms of the prayers made by the petitioners for acceptance of the proposal of the petitioners under letter dated 18.1.2006 does not arise at all.

4. We have heard the Advocates for the parties at length. The Advocates have also relied upon the various reported decisions, the reference would be made to the same in the course of this Judgment. The main point which arises for consideration is whether there has been a concluded contract in relation to the sale and purchase of the hotel premises between the respondents No.1 and the respondent No.3 and, if so, when such an agreement stood concluded?

5. Undoubtedly, under letter dated 23.11.05, the respondent No.3 offered to purchase the hotel property of M/s. Falcon Retreat Pvt. Ltd. for an amount of Rs.12.99 crores while abiding to agree to the general terms and conditions of the auction for sale of the unit. It is a matter of record that such an offer was duly considered by the Board of respondent No.1, in its meeting held on 5.12.05, and undisputedly the Board is the competent authority to decide about the acceptance or refusal of such offer. It was resolved and decided, to accept the offer of respondent No.3 for purchase of M/s Falcon Retreat Pvt. Ltd., at Rs.12.99 crores. It was also approved that the possession of the hotel property to be handed over to the prospective purchaser on payment of 50 % of the total sale consideration. The decision of acceptance of proposal of the respondent No.3 was communicated to the respondent No.3 by respondent No.1 by letter dated 12.12.05. It was also clarified that the offer was on cash down

basis and 30 % of the accepted price was required to be paid within 10 days after adjusting the E.M.D. of Rs.50.00 lakhs which was tendered by respondent No.3 along with its letter dated 23.11.05. It was also made known to the respondent No.3 that the balance amount was required to be paid within 30 days and in case of failure to pay the amount within the time period indicated in the letter, the Corporation i.e. the respondent No.1 would be entitled to forfeit the E.M.D. payment. It is sought to be argued on behalf of the respondent No. 3 that the correspondence discloses a concluded contract between the respondent No.1 and the respondent No.3 in relation to the sale and purchase of the hotel property of M/s. Falcon Retreat Pvt. Ltd. It is sought to be contended on behalf of the petitioners that the correspondence between the respondent No.1 and 3 nowhere disclosed a concluded contract. It merely discloses an offer and counter offer.

6. Shri S.M. Usgaonkar, the learned Counsel appearing for the petitioners submitted that the letter dated 23.11.05 apparently discloses that the respondent No.3 required a period of 2 to 3 months to clear the payment of total price which is contrary to the conditions of sale. In answer to the said letter, the respondent No.1 did not communicate unconditional acceptance of the said proposal and rather made a counter proposal inasmuch as that the acceptance of the offer at the rate Rs.12.99 crores was subject to cash down

basis and further that 30 % of the amount was required to be paid within 10 days and the balance within 30 days with the rider that in case of failure to pay the amount within the stipulated period, the amount already paid would stand forfeited. This, according to the learned Counsel, clearly discloses a counter offer and not acceptance of the offer of the respondent No.3 vide letter dated 23.11.05. Drawing attention to Section 7 of the Indian Contract Act, the learned Advocate submitted that the phraseology of the letter dated 12.12.05 obviously reveals that the respondent No.1 had not accepted the conditional offer made by respondent No.3, particularly in relation to the payment of such amount within 2 to 3 months and had made a counter offer in that regard which was never accepted by respondent No.1.

7. Shri S. G. Dessai, the learned Senior Counsel appearing on behalf of the respondent No.3, however, drawing attention to the letter dated 27.12.2005, submitted that under the said letter respondent No.3 had forwarded further Demand Draft of Rs.25.00 lakhs towards the liability under the concluded contract. Further drawing attention to letter dated 24.1.06, the respondent No.3 had sought for three months' time to complete the payment of the balance amount while assuring the due compliance of the agreement between the parties. According to him, the respondent No.3 has also further paid a sum of Rs.3.15 lakhs by Demand Draft dated 10.2.06 on the 10th

February, 2006 itself and has tendered a cheque for Rs.9.09 crores towards the balance amount to the respondent No.1 in addition to a cheque for Rs.18,03,008/- towards the interest payable in terms of the conditions of the sale and as regard the balance amount, a detailed letter dated 13.2.2006 in that regard was written explaining the figures arrived at in respect of the interest. Copies of all these correspondence is on record. Clause 8 of the terms and conditions of the tender clearly provides that the successful tenderer is liable to pay amount of 30 % within 10 days and the balance within one month and in case of delay in payment, the respondent No.1 may charge interest at the rate of 14 per cent per annum on such delayed payment which eventually discloses that the time in relation to the payment of amount is not the essence of the agreement and the interest of the respondent No.1 is totally safeguarded by prescribing interest at the rate of 14 per cent per annum and the respondent has offered the same. According to the learned Senior Advocate, therefore, there being a concluded contract between the respondents No.1 and 3, the question of entertaining the offer of the petitioners at this stage by respondent No.1 in relation to the said property does not arise. In any case, the matter relates to the contractual liability between the parties and, therefore, there is no scope for exercise of writ jurisdiction nor can this Court grant any relief as prayed for.

8. Mr. M.S. Sonak, the learned Counsel appearing for the

respondent No.1 has stated that though the respondent No.1 would be interested in getting the maximum price for the property from its sale, it is a fact that on account of failure on the part of the petitioners to clear the dues and arrange the buyer for the property, inspite of the fact that on seven occasions the auction was postponed, that the respondent No.1 was compelled to accept whatever proposal was available. Therefore, the respondent No.1 accepted the offer of the respondent No.3 for Rs.12.99 crores towards the sale of the said property and the said fact was duly acknowledged by the respondent No.3 by letter dated 12.12.05; being so, in view of the concluded contract between the parties, the question of entertaining any offer from the petitioners at this stage does not arise at all.

9. Mr. Usgaonkar, learned Counsel for the petitioners, however, submitted that the letter of 12.12.05 cannot be construed as acceptance of offer in the circumstances wherein by the letter dated 5.12.05 by the respondent No.1 itself required the petitioners to get an offer over and above the offer made by respondent No.3 and such a letter was received by the petitioners on 13.12.05 i.e. after 12.12.05. Being so, on 13.12.05 the offer made to the petitioners to arrange buyer was still subsisting and, therefore, it cannot be said that on the day previous thereto, there was already a concluded contract in relation to the property in question between the respondent No.1 and the respondent No.3.

10. It is not in dispute that the authority competent to accept the offer made by respondent No.3 was the Board of the respondent No.1 and the Board in its meeting held on 5.12.05 in no uncertain terms resolved that the proposal of the respondent No.3 was to be accepted for the sum of Rs.12.99 crores and that the possession of the property should be handed over on payment of 50 % of the total amount to the respondent No.3 and the said resolution was duly communicated to the respondent No.3 on 12.12.05. It clearly discloses the concluded contract between the respondents No.1 and 3 in relation to the sale of the property in question.

11. Undoubtedly, the letter dated 23.11.05 by respondent No.3 discloses the statement to the effect that the respondent No.3 would need period of 2 to 3 months for making the total payment. However, that was not stated as a condition of the offer at the rate of Rs.12.99 crores for purchase of the property. On the contrary, the letter of 23.11.05, categorically stated that the respondent No.3 was agreeable to the general terms and conditions of the auction for sale of the unit. Further the resolution of the Board of respondent No.1 clearly discloses that the offer of respondent No.3 for purchase of the property at Rs.12.99 crores was accepted. It also discloses that the possession of the property to be sold could be given to the respondent No.3 on payment of 50 % of the total amount. It is also a matter of record that while communicating the said decision of the Board of

respondent No.1, it had informed the respondent No.3 about the terms and conditions of the sale and they included the terms relating to mode of payment and the time schedule for payment and also the warning about the right of the respondent No.1 to forfeit the EMD and the payments already made in case of failure to pay the the total amount of consideration within the specified period. However, these conditions are not something new and/or different from the terms and conditions of the auction. On the contrary, clause 8 of the terms and conditions clearly discloses that the tenderer has to pay cash down basis and the amount of 30 % has to be paid within 10 days and the balance 70 % within 30 days. Same term was reproduced in the letter dated 12.12.05. Being so, by no stretch of imagination, the letter of 12th December, could be said to be a counter offer. It is rather an intimation of the decision of the Board of respondent No.1 to accept the offer of respondent No.3 made on 23.11.05. Undisputedly, the Board is the competent authority to decide about the acceptance or refusal of such offers. Viewed from this angle, the contention that the letter dated 23.11.05 discloses a counter offer or that the letter dated 12.12.05 discloses conditional counter offer, has to be rejected. The respondent No.1 has also explained in what circumstances the letter dated 5.12.05 was sent to the petitioners. It is a practice that is followed by the respondent No.1 that even though a proposal by a stranger for purchase of the attached property is decided to be accepted yet, an opportunity is given to the mortgagor to get the

property released or purchased for a better offer. In consonance with the said practice followed by respondent No.1, the said letter dated 5.12.05 was addressed to the petitioners. But, that by itself, cannot amount to deny the rights already crystallized in the form of a concluded contract between the respondents No.1 and 3.

12. Undisputedly, the respondent No.3 did not pay either the 10 % amount within the period of 10 days or the balance amount within 30 days from the date of communication of the decision of acceptance of offer. However, it is to be noted that clause 8 of the tender conditions clearly provides for levy of interest at the rate of 14 % in case of default in payment. The clause regarding forfeiture of EMD or payments made also gives discretion to respondent No.1 to forfeit such amounts, but it does not mandate that in each and every case there has to be forfeiture of such amount. The provision regarding discretion in that regard coupled with the provision as to the charge of interest on the delayed payment clearly discloses that the decision as to whether the contract arrived at should be revoked or not is left to the discretion of the respondent No.1. Undisputedly, there has been no communication whatsoever to the respondent No.3 by respondent No.1 revoking or canceling the concluded agreement between the parties in relation to the sale of the property either on account of non-payment of the amount within the stipulated period or on any other count.

13. Attention was drawn to the decision in the matters of **State of Madhya Pradesh and another v. Firm Gobardhan Dass Kailash Nath,** reported in AIR 1973 SC 1164; **The D.F.O. South Kheri & ors. v. Ram Sanehi Singh.,** reported in AIR 1973 SC 205; and **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and ors.,** reported in (2004) 7 SCC 166. In **Firm Gobardhan Dass Kailash Nath's case,** it was held that if the person whose tender is accepted fails to pay the balance amount of 75 per cent of the price, the State would be entitled to forfeit the initial deposit of 25 per cent and resell the goods and recover the deficit, if any, from, the purchaser. Obviously, the observation was with reference to the conditions subject to which the tenders were invited. It was held that conditions 5 and 6 were conditions to sell subject to which a tender could be validly accepted and sanctioned by the competent authority i.e. Chief Conservator and there was no proof by way of anything in writing to show that such a sanction was in fact given. It was also held that there was no proof that the Chief Conservator had the authority to waive the conditions subject to which the only tender could be validly accepted and sanctioned. Being so, in the absence of initial deposit of 25 per cent of the purchase price having been made on the spot, the tenders could neither be validly accepted nor sanctioned by the Chief Conservator and in the absence of any authority to waive the condition, there was no acceptance or sanction

of the tenders. In those set of facts, the Apex Court ruled that the true position, therefore, was that the offering of the said tenders by the respondent firm and their purported acceptance by the Forest authorities never ripened into a concluded contract. It was further held that :

> " The initial deposit not having been made according to Condition 5 to which acceptance of the tender was subject, the purported acceptance was not a valid one, there was no concluded contract and therefore neither Conditions nor Rule 30 (3) (e) became applicable."

The ruling obviously discloses that the Condition 5 was required to be complied strictly and failing which no right was created in favour of the tenderer. As already seen above, the terms and conditions of the sale in the case in hand nowhere prescribes that Condition No.8 warrants strict compliance of time-frame for the payment of the amount. On the contrary, it contemplates for levy of interest in case of delayed payment. Obviously, the clause regarding time-frame for payment of amount coupled with the liability to pay interest in case of delay in payment, cannot be construed as mandatory in the nature as was sought to be argued on behalf of the petitioners and, therefore, the decision of the Apex Court in **Firm Gobardhan Dass Kailash Nath (supra)** is of no help to the petitioners.

14. As regards the decision in the case of **S.J.S. Business Enterprises (P) Ltd. (supra),** it was held that the presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probabilise the abuse of that power and further that in the matter of sale under Section 29, the State Financial Corporations must act in accordance with the statute and must not act unfairly i.e.. unreasonably. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold. Attention was drawn to this ruling while contending that inspite of the fact that the petitioners have volunteered to secure the purchaser for 14.00 crores, the respondent No.2 has shown undue haste in accepting the proposal of Rs.12.99 crores. Inspite of the fact that the best offer being made on behalf of the petitioners, the respondent has no justification to sell the property for lesser amount and the hurry with which the property is sought to be sold to the respondent No.3 for lesser amount shows lack of bona fide on the part of the respondent Corporation which, itself, justifies interference by this Court and issuance of directions prayed for.

15. On the other hand, it was sought to be contended on behalf of the respondent No.1 that undisputedly, the respondent Corporation is interested in getting maximum amount of price.

However, the past conduct of the petitioners has established that apart from hollow promises, the petitioners have not been able to either arrange the amount for discharge of their liability or to procure the purchaser for the substantial amount and it is only when the respondent No.1 proceeded to accept the offer of respondent No.3 after having tried to auction the property seven times and shown indulgence for umpteen times to the petitioners, the petitioners pretend to have come up with the offer of higher amount. There is no justification to accept the proposal on behalf of the petitioners at this late stage. Besides, the amount forwarded in the form of demand drafts and cheques by the respondent No.3 to respondent No.1 is almost near about the sum of Rs.14.00 crores as it includes the interest at the rate of 14 per cent on the delayed payment. Being so, the petitioners are not justified in alleging lack of bona fide on the part of the respondent No.1 is accepting an offer for an amount lesser than the one made on behalf of the petitioners. Besides, the purchaser sought to be procured on behalf of the petitioners has not disclosed all details about its financial capacity to discharge the liability and to pay the amount within the stipulated period. Apart from forwarding the sum of Rs.1.00 crore and that too after filing the petition, the petitioners have not come forward with any further amount in the matter. Hence, the decision of the Apex Court in the case of **S.J.S. Business Enterprises (P) Ltd. (supra)** is also of no help to the petitioners.

16. While contending that there is a concluded contract between the respondent No.1 and the respondent No.3, the learned Senior Counsel on behalf of the respondent No.3 has drawn attention to the decision of the Apex Court in the cases of **Rickmers Verwaltung GMBH v. Indian Oil Corporation Ltd.,** reported in (1999) 1 SCC 1 and **Dresser Rand S.A. v. Bindal Agro Chem Ltd.,** reported in (2006) 1 SCC 751. In fact, in the later case, the Apex Court has followed its earlier case in **Rickmers Verwaltung GMBH (supra).** In **Rickmers Verwaltung GMBH's** case, the Apex Court had held that in considering whether the correspondence between the parties spell out an agreement or not, the cardinal principle to be remembered is that it is the duty of the Court to construe the correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties which could create a binding contract between them, however, the Court is not empowered to create a contract for the parties by going outside the clear language used in the correspondence, except insofar as there are some appropriate implications of law to be drawn. Unless from the correspondence, it can unequivocally and clearly emerge that the parties were ad idem to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The Court is required to review what the parties wrote and how they acted and from that material to infer whether

the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement upon all material terms, then and then alone it can be said that a binding contract was capable of being spelt out from the correspondence. Applying this rule to the facts of the case in hand, it is apparent that the intention of the respondent No.3 to purchase the hotel property for the sum of Rs.12.99 crores was made clear while adhering to the general terms and conditions of the auction for sale of the unit under letter dated 23.11.05. Undisputedly, there was mention about the need of period of 2 to 3 months for making the total payment. But such a statement in the letter would not make the offer conditional in the facts and circumstances, which disclose a clear statement about acceptance of terms and conditions of sale and those terms disclose the methodology of payment of purchase price, albeit with an interest at the rate of 14 per cent on the delayed payment. Being so, the offer under letter dated 23.11.05 can, by no stretch of imagination, be said to be the conditional offer. Likewise, the offer was clearly accepted by the respondent No.1 and it was communicated to the respondent No.3 under letter dated 12.12.05. The reference to the conditions regarding payment of the amount within the time-frame in the said letter is nothing but reproduction

of one of the clause regarding the time schedule of payment from the conditions of the auction for sale. Reproduction of such clause cannot be construed to mean a counter offer. Besides, the letter dated 12.12.05 will have be read along with decision of the Board dated 5.12.05 which unequivocally discloses a decision on the part of respondent No.1 to accept the proposal of the respondent No.3 as regards the sale of the hotel property.

17. While drawing attention to the fact that inspite of seven attempts to put the property to auction, there was no favourable response and there was utter failure on the part of the petitioners to procure purchaser to the property as well as to discharge the liability, attention was drawn to the decision of the Apex Court in the case of **Haryana Financial Corporation and anr. v. Jagdamba Oil Mills and ors.,** reported in (2002) 3 SCC 496, wherein the Apex Court had held that the fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them and unless its action is mala fide and even a wrong decision by it is not open for challenge. It is not for the Courts or a third party to substitute its decision however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. Indeed, in the facts and circumstances of the case where it is revealed that the consistent efforts on the part of the respondent No.1-Corporation for seven times to get the property

sold in auction proved futile and the petitioners for all this time neither raised the funds to discharge their liability nor procured the purchaser for the property, the decision on the part of the respondent No.1 in accepting the proposal of the respondent No.3 can hardly be said to be lacking bona fide. The allegation of lack of bona fide is not only vague, but it itself lacks bona fide. Undisputedly, the petitioners had not been able to procure the purchaser for seven times, nor to discharge their liability and have only pretended to have woken up after the respondent No.1 was able to get a purchaser for reasonable and satisfactory price for the disposal of the property.

18. Reliance is placed in the decision in the matter of **Jawahar Lal Barman v. The Union of India,** reported in AIR 1962 SC 378, while contending that the entire correspondence has to be read as whole to ascertain whether there is absolute and unqualified acceptance of offer. Indeed, the Apex Court in the said decision had held that under Section 7 of the Contract Act the acceptance of the offer must be absolute and unqualified and it cannot be conditional. On behalf of the respondent it was sought to be contended that the contention relating to the payment of the amount is subsequent to entering into the contract and it is not a precondition for the contract and in that connection , para 16 of the decision in **Jawahar Lal Barman's case (supra)** was sought to be relied upon. Therein, the Apex Court had held that when reading of the letter as a whole

discloses that there was absolute and unqualified acceptance of offer or tender made by the party and that it was not intended to make a substantial variation in the contract by making the deposit of security a condition precedent instead of condition subsequent, it would be a concluded contract. In other words, the condition relating to payment of price is made condition subsequent to the act of entering into the agreement and not deposit or security condition to be precondition for the purpose of entering into an agreement of sale, then the delay in discharge of such subsequent condition would not frustrate the contract. In the case in hand, undisputedly, apart from the delay in payment of amount by the respondent No.3 to respondent No.1, there has been no termination of agreement as such by respondent No.1.

19. Reliance was sought to be placed in the decision in the matters of **State of Bihar and ors. v. Jain Plastics and Chemicals Ltd.**, reported in (2002)1 SCC 216; **Binny Ltd. and anr. v. V. Sadasivan and ors.,** reported in (2005) 6 SCC 657 and on behalf of the petitioners in the case of **The D.F.O. South Kheri and ors. (supra)** in support of rival contentions regarding maintainability and non-maintainability of the petition in relation to the matter in issue. However, considering the view that we are taking in the matter, it is not necessary to deal with the said point sought to be raised on

behalf of the respondents.

20. When the matter came up for hearing before this Court, the petitioners volunteered to deposit the sum of Rs.1.00 crore to establish their bona fide. Accordingly, the petitioners were allowed to deposit the said amount without prejudice to the rights of the parties to the petition. However, as already seen above, after hearing the parties, it is seen that there is already a concluded contract arrived at between the respondents No.1 and 3 and, therefore, the question of directing the respondent No.1 to accept the said amount of Rs.1.00 crore towards the sale of the property to the nominee of the petitioners does not arise. The said amount is liable to be refunded to the petitioners. It is to be noted that the petitioners have approached this Court with the contention that there was no concluded contract between the respondents No.1 and 3.

21. For the reasons stated above, therefore, there is no case made out for interference in the writ jurisdiction in this matter. The petition, therefore, fails and is, hereby, dismissed. Rule is discharged with costs. The amount of Rs.1.00 crore deposited by the petitioners be refunded to the petitioners.

R.M.S. KHANDEPARKAR, J.

N.A. BRITTO, J.

ssm.